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U.S. Patent Application Serial No. 10/807,622

Title: Container for Cotton Swabs

Filing Date: March 23, 2004

Attorney Docket No. 283-003-USP

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FROM: Peter B. Scull/Reg. No. 37,932

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Fax Transmittal Cover Sheet (1 page);

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Fee Transmittal for FY 2005 (2 pages: original + duplicate for fee processing); and

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TRANSMITTAL FORM (to be used for all correspondence after initial filing)	Application Number	10/807,622	RECEIVED CENTRAL FAX CENTER APR 13 2006
	Filing Date	March 23, 2004	
	First Named Inventor	Sasan Daneshi	
	Art Unit	3728	
	Examiner Name	JOHNSON, Jarold D.	
Total Number of Pages in This Submission	23	Attorney Docket Number	283-003-USP

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.62 or 1.63	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Hensley Kim & Edgington, LLC		
Signature			
Printed name	Peter B. Scull		
Date	April 13, 2006	Reg. No.	37,932

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FEE TRANSMITTAL **For FY 2006**

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) **250.00**

Complete if Known

Application Number **10/807,822**
Filing Date **March 23, 2004**
First Named Inventor **Sagan Danechi**
Examiner Name **JOHNSON, Jerrold D.**
Art Unit **3728**
Attorney Docket No. **283-003-USP**

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1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180
Total Claims	Extra Claims	Fee (\$)
- 20 or HP = _____ x _____ = _____		
HP = highest number of total claims paid for, if greater than 20.		
Indep. Claims	Extra Claims	Fee (\$)
- 3 or HP = _____ x _____ = _____		
HP = highest number of independent claims paid for, if greater than 3.		

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets **Extra Sheets** **Number of each additional 50 or fraction thereof** **Fee (\$)** **Fees Paid (\$)**

- 100 = _____ / 50 = _____ (round up to a whole number) x _____ = _____ **Fees Paid (\$)**

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): **Access Brief**

\$250.00

SUBMITTED BY

Signature

Name (Print/Type) **Peter B. Scull**

Registration No. **37,832**
(Attorney/Agent)

Telephone **720-377-0773**

Date **April 13, 2006**

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Attorney Docket No. 283-003-USP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

APPLICANT/APPELLANT: SASAN DANECHI

APPLICATION No.: 10/807,622

FILED: MARCH 23, 2004

TITLE: CONTAINER FOR COTTON SWABS

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APR 13 2006

Examiner: Jerrold D. Johnson
Group Art Unit: 3728
Confirmation No: 4037

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

On February 13, 2006, Applicant, now Appellant, Sasan Danechi, filed a timely Notice of Appeal from the action of the Examiner dated September 13, 2005 (no Paper No. given), in which claims 1-20, which are all of the claims that have at all times been pending in this case, were placed under Final Rejection.

This Brief is filed pursuant to 37 CFR Part 41, and particularly §41.37. The Filing Fee of \$250.00 is attached hereto pursuant to 37 CFR §41.20.

An oral hearing is specifically not requested.

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I. REAL PARTY IN INTEREST

This application is owned by the Inventor, the above-captioned Applicant/Appellant, Sasan Danechi, who always has been and yet remains the real party in interest. There are no other parties holding any interest herein.

II. RELATED APPEALS AND INTERFERENCES

There are no appeals, interferences or judicial proceedings known to Appellant, or Appellant's legal representative which are related to, will directly affect or be directly affected by or have a bearing on the Board's decision in this Appeal.

III. STATUS OF CLAIMS

Claims 1-20 are all of the claims pending in this case, and all of claims 1-20 were examined and stand rejected. No claims stand allowed or confirmed, and no claims stand withdrawn or canceled. Claims 14 and 17 further stand objected to for substantially minor issues of form. The rejections of all of the claims 1-20 are hereby appealed.

IV. STATUS OF AMENDMENTS

On January 13, 2006, in response to the Final Rejection Office Action mailed September 13, 2005, Appellant submitted a proposed Amendment to particularly propose amendments to claims 1, 2, 5, 14 and 17, with no proposals for cancellation nor addition of claims. Entry of the proposed amendments was denied by the Advisory Action dated February 15, 2006. Thus, the claims set forth in the Claims Appendix reflect the claims as they stood before the proposed amendments; i.e., the proposed amendments are not presented in the claims of the Claims Appendix.

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V. SUMMARY OF CLAIMED SUBJECT MATTER

A concise description of the subject matter of each of the independent claims hereof follows with parenthetical references to the specification, by page and line number, and to the drawings, by reference characters.

The subject matter of an embodiment of the present application involves a container (page 3, line 20, *inter alia*, element 1, Figs. 1 and 2, *e.g.*) for swabs (page 3, line 21, *inter alia*, elements 20, Figs. 1 and 2, *e.g.*), the container including:

- a housing (page 3, lines 21-23, *inter alia*, element 2, Figs. 1 and 2, *e.g.*) defining a chamber (page 3, line 23, *inter alia*, element 4, Fig. 2, *e.g.*) with an opening (page 3, line 24, *inter alia*, element 5, Fig. 2, *e.g.*) for receiving and containing a plurality of swabs therein;

- a hinged lid (page 3, line 21, *inter alia*, element 3, Figs. 1 and 2, *e.g.*) for alternately opening and closing said opening of said housing, said lid being connected to said housing by a hinge (page 4, line 5, *inter alia*, element 8, Fig. 2, *e.g.*) and said lid being capable of moving in a substantially rotational motion (Fig. 2a, 2b, 2c and 2d) pivoting about said hinge, moving between a closed position (Fig. 2a) and an open position (Fig. 2d) relative to said opening of said housing;

- a movable internal support member (page 3, line 28, *inter alia*, element 6, Fig. 2, *e.g.*) movably disposed within said chamber for supporting said swabs, said support member being capable of moving between a first position (Fig. 2a) in which said swabs do not substantially protrude from said opening, and a second position (Fig. 2d) in which said swabs substantially protrude from said opening; and,

- a mechanism (page 4, line 10, *inter alia*, element 9, Fig. 2, *e.g.*) rigidly connected to the lid and disposed to engage in movable contact with the support member, the mechanism linking the rotational motion of said lid to at least partially cause movement of said support member such that the support member is disposed in the first position (Fig. 2a) when the lid is in the closed position and the support member is disposed in the second position (Fig. 2d) when the lid is in the open position;

whereby the mechanism creates a camming effect in its movable contact with said support member to cammingly move the support member.

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The subject matter of the present application further includes a swab dispensing system involving:

at least one swab (page 3, line 21, element 20, Figs. 1 and 2);
 containing means (page 3, lines 20 and 21, *inter alia*, elements 1 and 2, Figs. 1 and 2, *e.g.*) for containing said at least one swab; said containing means including covering means (page 3, line 21, *inter alia*, element 3, Figs. 1 and 2, *e.g.*) for covering the at least one swab within the containing means, the covering means being rotatably connected to the containing means to alternately open and close the containing means;

a movable internal support means (page 3, line 29, *inter alia*, element 6, Fig. 2, *e.g.*) for supporting the at least one swab;

whereby the movable internal support means is operatively mechanically linked to the covering means by a rigid camming means (page 4, line 10, *inter alia*, element 9, Fig. 2, *e.g.*) on the closing means, the rigid camming means creating a camming effect in its movable contact with said support means to cammingly move the support means such that rotational movement of the covering means causes translational movement of the movable support means.

Additionally, the subject matter hereof also involves a method for dispensing swabs, the method including:

providing a container (page 3, line 20, *inter alia*, element 1, Figs. 1 and 2, *e.g.*) having at least one swab (page 3, line 21, *inter alia*, element 20, Figs. 1 and 2, *e.g.*) disposed therein, the container having an opening (page 3, line 24, *inter alia*, element 5, Fig. 2, *e.g.*) and lid (page 3, line 21, *inter alia*, element 3, Figs. 1 and 2, *e.g.*) rotatably connected to the container to alternately open and close the container opening; the container also having a movable internal support member (page 3, line 29, *inter alia*, element 6, Fig. 2, *e.g.*) disposed therein for supporting the at least one swab;

moving the lid from a closed position (Fig. 2a) to an open position (Fig. 2d), whereby the movable internal support member also moves in response to movement of the lid, the support means being operatively mechanically linked to the lid by a rigid camming member (page 4, line 10, *inter alia*, element 9, Fig. 2, *e.g.*) on the lid,

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the rigid camming member creating a camming effect in its movable contact with said support member to cammingly move the support member such that rotational movement of the lid causes movement of the movable support means, the movement of the lid causing a protrusion of the at least one swab from the opening of the container; and,
removing at least one swab from the container.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Should claims 14 and 17 be objected to for clerical errors?

Are claims 1 and 3-6 patentable under 35 U.S.C. 103(a) as non-obvious over the U.S. Patent to *Segal*, No. 2,112,866 (hereafter "*Segal*") in view of the U.S. Patent to *Thorn*, No. 5,983,026 (hereafter "*Thorn*")?

Are claims 1-4 and 6-20 patentable under 35 U.S.C. 103(a) as non-obvious over the U.S. Patent to *de la Rocha*, No. 5,330,056 (hereafter "*de la Rocha*") in view of the U.S. Patent to *Stoll*, No. 1,163,183 (hereafter "*Stoll*")?

Is claim 5 patentable under 35 U.S.C. 103(a) as non-obvious over *de la Rocha* in view of *Stoll*, and further in view of the U.S. Patent to *Avery*, No. 102,471 (hereafter "*Avery*")?

VII. ARGUMENT

The argument herebelow is separated by the respective grounds of rejection to be reviewed herein, as well as by claim in various situations where claims are argued separately. Sub-headings are used only for convenience in presentation and readability to separate portions of the argument, but, are not intended to limit the substance of argument in any way. Separate arguments on a claim by claim basis are not separated by sub-headings, even where patentability is separately argued.

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Claim Objections to Claims 14 and 17

Claims 14 and 17 stand objected to for certain Informalities identified in the Final Rejection Office Action of September 13, 2005. Appellant had proposed amendments of claims 14 and 17 in the Amendment submitted pursuant to **37 CFR 1.116** on January 13, 2006, to include the changes suggested by the Examiner. Applicant respectfully requests that these proposed amendments be re-considered and entered so that these changes can be incorporated, and then these objections may therefore be obviated and thence reversed. Action to this end is respectfully requested.

Claim Rejections – 35 U.S.C. §103

All of the section **103** rejections are respectfully traversed here. These rejections will be addressed in the order in which they were made in the Final Rejection Office Action of September 13, 2005.

Rejection of claims 1 and 3-6 over Segal in view of Thorn

First, as to the rejection of claims 1 and 3-6 over *Segal* in view of *Thorn*, Appellant respectfully notes that *Segal* does indeed teach some of the concepts urged by the Examiner, including a housing, a hinged lid, a movable support (though not as presently claimed) and a mechanism to provide a camming effect to move the movable support. However, Appellant also agrees with the Examiner that *Segal* does not teach nor suggest an inclusion of a plurality of swabs disposed therein. Moreover, Appellant does not agree that *Segal* is "inherently suitable for swabs," but, perhaps more importantly, that the movable support of *Segal* is not the same as nor does it suggest the movable support claimed by the Appellant here, particularly where Appellant's claimed support member is "capable of moving between a first position in which said swabs do not substantially protrude from said opening, and a second position in which said swabs substantially protrude from said opening."

And, *Thorn* does not cure these lackings.

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The law of obviousness requires that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." See e.g., MPEP 2143, *Inter alia* (and, see also, e.g., the citation therein to *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991), which was a case where the court concentrated in great detail upon what the prior art there actually "taught," "expressed," "conveyed," and/or "spoke of").

In the present case, there is no suggestion or motivation to modify the cited references to provide the claimed limitation of a support member capable of providing swabs protruding from the container upon movement by a mechanism of the support member. Note, this remains true even if *Segal* does teach an arguendo camming mechanism which moves a support in its particular setting. Neither protruding swabs nor a support member providing same are taught or suggested by a modification or combination of *Segal* or *Thorn*. If no swab-protruding device results, as it does not or would not here, then, not all claim limitations are taught or suggested as they must be. See again, MPEP 2143 and here also MPEP 2143.03. There is thus no suggestion or motivation to thereby result in a swab-protruding device such as Appellant's presently-claimed device.

Moreover, there is no expectation of success from such an alleged modification. See yet again MPEP 2143, *Inter alia*. Both *Segal* and *Thorn* have completely operable, manual devices which expect no modification for their particular type of success; so why would either of the *Segal* or *Thorn* devices expect to be made over or modified to generate a non-suggested swab-protruding support member? *Segal* provides a successful device without suggesting any need for element protrusion. Moreover, *Thorn* does not go so far as to suggest that its otherwise successful non-moving entity should, would or could be wholly retrofitted and incorporated on or within any other device to create any expectation of success therefore, particularly in a cammingly movable embodiment. There is no such expectation, thus, no suggestion for the asserted modification. No reasonable expectation of success comes from either of these references. See e.g., MPEP 2143.01 and 2143.02, *inter alia*.

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Still moreover, a combination of references cannot render the combined process/apparatus inoperative, or change the principle of operation thereof, or render it less than satisfactory for its original purpose. See MPEP 2143.01. For the reasons given, such would be the case in any asserted combination of *Segal* with *Thorn*. Certainly, *Segal* involves a movable member which has some lift (rotational though it is); however, *Thorn* has no such movable internal member. It is not suggested how the combination of *Segal* with *Thorn* would take into account this omission in element and functionality of *Thorn*. Indeed, using the device of *Thorn* in any way with a moving internal member would entirely change the means of operation of *Thorn* (and indeed of *Segal*, which doesn't teach or suggest a swab-protruding support member) from a non-mechanically-moving bundle of swabs to a mechanically-moved bundle of swabs. Since this would improperly render the *Thorn* device inoperative for its original intended purpose, or otherwise improperly change the basis of operation thereof, the combination is improper and the rejection based thereon must be reversed.

As a result of one or more of the above points, there is no appropriate suggestion for combination of *Segal* with *Thorn*. This remains true regardless of *Thorn*'s teachings about having cotton swabs disposed therein. Thus, Appellant's claims 1 and 3-6 are non-obvious over *Segal* in view of *Thorn*; the rejections thereof are rendered obviated and/or traversed. The rejections should therefore be overruled/reversed. Action to this end is respectfully requested.

Rejection of claims 2 and/or 6 over *Segal* in view of *Thorn*

Still further addressing the first rejection cited above, i.e., of claim 1 and 3-6 over *Segal* in view of *Thorn*, Appellant notes here that claims 2 and 6 also have incorporated therein a "translational" limitation therein; namely "wherein the movement of said support member is substantially translational" and "for moving the support member in a translational direction," respectively. In direct contrast, *Segal*'s support member is adapted to move rotationally, not translationally, and thus, *Segal*, with or without *Thorn*, does not explicitly, nor implicitly meet this additional limitation,

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which thereby traverses this rejection, particularly with respect to claims 2 and/or 6, without need for addressing any further contentions relative to these references. Appellant thus respectfully requests reversal of this rejection, for this additional alternative basis for claims 2 and/or 6, at least.

Rejection of claims 1-4 and 6-20 over de la Rocha in view of Stoll.

The next section 103 rejection was of claims 1-4 and 6-20 as being purportedly unpatentable over *de la Rocha* in view of *Stoll*. For this rejection, Appellant respectfully notes that each of the Independent claims from this group, namely, claims 1, 17 and 18, recite either a rigid mechanism, or a rigid camming means/member on the closing/covering means/lid, the rigid camming means/member creating a camming effect in its movable contact with said support means/member to cammingly move the support means/member. And, in this respect, Appellant agrees with the Examiner that *de la Rocha* teaches no mechanism like this; rather, *de la Rocha* teaches a non-rigid ribbon for lifting a support means, the ribbon not being connected to and otherwise having nothing whatever to do with the opening of the lid.

And, Appellant respectfully notes that *Stoll* does not cure this failure, this lacking, of *de la Rocha*.

Here as before, the law of obviousness requires that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings." See e.g., MPEP 2143, *inter alia* (with a nod once again to *In re Vaeck*, including its focus upon what the prior art actually "taught," "expressed," "conveyed," and/or "spoke of").

Also as before, there is here as well, no suggestion or motivation to modify the references to provide a lift mechanism of any type other than a ribbon to *de la Rocha*, even if *Stoll* does teach an arguendo lid-actuated camming lift mechanism in its particular setting. There is no reason given why *de la Rocha*'s non-rigid ribbon

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should be removed and replaced with a completely different lift device. There is thus no suggestion or motivation to thereby result in a device such as Appellant's claimed device here. *De la Rocha* has a completely operable, manual device which expects no modification; why would *de la Rocha*'s device expect a complete makeover to include a lid-operated, rigid camming lift mechanism as opposed to the non-rigid ribbon-lift thereof? There is no such expectation, thus, no suggestion for the modification.

Moreover, there is no reasonable expectation of success coming from either of these references for such a mechanism modification. See e.g., MPEP 2143.01 and 2143.02, *inter alia*. *De la Rocha* teaches a device with apparent complete success without a lid-operated lift mechanism, or anything like a lid-lift, so no further expectation of success would be evident from the teaching of *de la Rocha*. *Stoll* also does not go so far as suggest that its lift mechanism be removed therefrom and retrofitted on any other device to create any expectation of success therefor.

Still moreover, a combination of references cannot render the combined process/apparatus inoperative, or change the principle of operation thereof, or render it less than satisfactory for its original purpose. See MPEP 2143.01. For the reasons given, such would be the case in any asserted combination of *de la Rocha* with *Stoll*. The non-lid-operated *de la Rocha* soft ribbon activation would be completely changed in the principle of operation thereof if substituted with a rigid, lid-actuated mechanism such as that in *Stoll*. Thus, the combination is improper here and the rejection based thereon must be reversed.

Thus, there is no suggestion for combination of *de la Rocha* with *Stoll*. This remains true regardless *de la Rocha*'s teachings about cotton swabs. Thus, Appellant's claims 1-4 and 6-20 are non-obvious over *de la Rocha* in view of *Stoll*, the rejections thereof rendered obviated and/or traversed. The rejections should therefore be overruled/reversed. Action to this end is respectfully requested.

Even so, a further note about *de la Rocha* and its teachings about cotton swabs, is that *de la Rocha* is intended to address a container for makeup devices,

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i.e., swabs used for cosmetic/makeup application which, at least in some instances, include the intent for re-use thereof. This makes it imperative to have separate compartments for each of the single-headed swabs so that these can and/or will not be cross contaminated, by being in a bundle. This is contrary to the presently-claimed devices where there is no such restriction necessary or suggested for the "plurality of swabs." *De la Rocha* does not therefore enable or suggest a device such as that claimed here.

Rejection of claims 7 over de la Rocha in view of Stoll

Claim 7 has a further claimed limitation of a "lever" and a "recess" which "operatively receiv[es] a free end of the lever." Neither *Stoll* nor *de la Rocha* teach or suggest such an arrangement. *De la Rocha*, as described, teaches a soft ribbon for its lift mechanism; nothing like a lever as claimed here. And, although *Stoll* does have something like a lever in his "arm 23" and a recess in his "slot"; it is not the free end of the *Stoll* arm 23 which is disposed in the *Stoll* slot. Rather it is a "pin or rivet 24" attached to the arm 23 which is disposed in the slot. This is different from the lever itself being engaged in the recess as claimed here. Claim 7 is thus further distinctive over and thereby patentable over *de la Rocha* in view of *Stoll*.

Rejection of claims 10, 11, 12, 14 and 15 over de la Rocha in view of Stoll

Claims 10, 11, 12, 14 and 15 have a further claimed limitation of a "lever" and a "recess for receiving a free end of the lever." Neither *Stoll* nor *de la Rocha* teach or suggest such an arrangement. *De la Rocha*, as described, teaches a soft ribbon for its lift mechanism; nothing like a lever as claimed here. And, although *Stoll* does have something like a lever in his "arm 23" and a recess in his "slot"; it is not the free end of the *Stoll* arm 23 which is disposed in the slot. Rather it is a "pin or rivet 24" attached to the arm 23 which is disposed in the slot. This is different from the lever itself being engaged in the recess as claimed here. Claims 10, 11, 12, 14 and 15 are thus further distinctive over and thereby patentable over *de la Rocha* in view of *Stoll*.

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Rejection of claim 12 over de la Rocha in view of Stoll

Claim 12 has a further claimed limitation of a "lever" and a "contour." Neither *Stoll* nor *de la Rocha* teach or suggest such an arrangement. *De la Rocha*, as described, teaches a soft ribbon for its lift mechanism; nothing like a lever with a particular contour as claimed here. And, although *Stoll* does have something like a lever in his "arm 23," this arm 23 has no particular "contour"; particularly not one "that ensures a smooth translation of a movement of the lid to a movement of the bottom member." Here again, it is the "pin or rivet 24" attached to the arm 23 which is disposed in the slot, and thereby ensures movement of whatever particular type. This is different from the lever of a particular contour itself being engaged in the recess and thereby ensuring with the contour the particular movement as claimed here. (Indeed, it appears that it is the shape of the actual *Stoll* slot, itself, which dictates the movement in the *Stoll* device, as opposed to the arm/lever shape or contour.) Claim 12 is thus further distinctive over and thereby patentable over *de la Rocha* in view of *Stoll*.

Rejection of claim 5 over de la Rocha in view of Stoll and Avery

As introduced above, Claim 5 stands rejected under 35 USC 103(a) as purportedly unpatentable over *de la Rocha* in view of *Stoll*, and further in view of *Avery*. The concept of a device accommodating double-headed swabs is not taught nor suggested by any of these references, either alone or in combination. Note, *de la Rocha* is adapted only for single-headed swabs kept in individual compartments, and more importantly, *de la Rocha* is specifically not extendible away from this. The problem that the *de la Rocha* device was intended to address was the containing of swabs used in the application of makeup so that those swabs would not contact any other items, whether the purse, or the container or each other, so that there would be no transfer of the makeup from that swab to any of the other items. Re-use of the swabs so contained appears also to be intended. Thus, the swab container of *de la Rocha* was specifically designed to have isolated, single-headed swabs adapted to be disposed in their own individual compartments, without contact of any other swabs. Double-headed swabs in bundles would not be readily usable and still

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maintain the intent of *de la Rocha* to keep the cosmetically-laden swab tips separated from each other. Any arguable modification of *de la Rocha* away from this would improperly render the combined process/apparatus inoperative, or change the principle of operation thereof, or render it less than satisfactory for its original purpose; contrary to MPEP 2143.01.

Applicant's device, on the other hand, specifically contemplates double-headed swabs in bundles, an object not taught or suggested by, nor adaptable from or by *de la Rocha*, alone or in any combination with *Avery* and/or *Stoll*. Indeed, any adaptation of *de la Rocha* toward such a plurality of double-headed swabs would be taught-away therefrom by the disclosure of *de la Rocha*. *De la Rocha* teaches single compartments for single-headed swabs for a very specific purpose. This very specifically teaches away from non-compartmentalized pluralities of double-headed swabs in any device, let alone one such as Appellant's here.

Thus, neither *Avery* nor *Stoll*, nor a combination thereof, can be combined with *de la Rocha* to create a container like Appellant's here. This rejection of claim 5 has thus been obviated/traversed so that it can also be reversed. Action to this end is respectfully requested.

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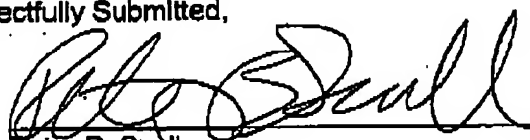
CONCLUSION

The Appellant respectfully requests reconsideration of the outstanding objections and/or rejections, reversal and/or overruling thereof, and consequent issuance of a notice of allowance for claims 1-20 in this matter.

Respectfully Submitted,

Dated: April 13, 2006

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CLAIMS APPENDIX

1. A container for swabs comprising:
 - a housing defining a chamber with an opening for receiving and containing a plurality of swabs therein;
 - a hinged lid for alternately opening and closing said opening of said housing, said lid being connected to said housing by a hinge and said lid being capable of moving in a substantially rotational motion pivoting about said hinge, moving between a closed position and an open position relative to said opening of said housing;
 - a movable internal support member movably disposed within said chamber for supporting said swabs, said support member being capable of moving between a first position in which said swabs do not substantially protrude from said opening, and a second position in which said swabs substantially protrude from said opening; and,
 - a mechanism rigidly connected to the lid and disposed to engage in movable contact with the support member, the mechanism linking the rotational motion of said lid to at least partially cause movement of said support member such that the support member is disposed in the first position when the lid is in the closed position and the support member is disposed in the second position when the lid is in the open position;
 - whereby the mechanism creates a camming effect in its movable contact with said support member to cammingly move the support member.
2. A container according to claim 1, wherein the movement of said support member is substantially translational.
3. A container according to claim 1, wherein the mechanism linking the rotational motion of the lid with movement of the support member is a lever substantially fixedly connected to said lid, and operatively connected in a movable contact relation to said support member such that as the lid is moved, the lever is caused to move therewith in a rotational motion and the lever causes by contact movement a motion of the support member.

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4. A container according to claim 3, wherein the lever creates a levering effect in its movable contact relation with said support member to move the support member by levering the support member.

5. A container according to claim 1, wherein the container is adapted to contain a plurality of double-headed cotton swabs.

6. A container according to claim 3, wherein the lever creates an effect selected from the group of a levering effect and a camming effect either of which providing for moving the support member in a translational direction.

7. A container according to claim 3, wherein said support member has attached thereto at least one extension member extending towards the hinge; and wherein the lever extends from the lid adjacent the hinge, and the extension member has a recess formed therein for operatively receiving a free end of the lever therein, the free end of the lever operatively engaging the extension member via the recess, operative to transmit motion thereto.

8. A container according to claim 1,
wherein said opening of said housing opens substantially upwardly;
wherein said opening provides for receiving a plurality of swabs in a substantially upright position;
wherein said support member is a bottom member for supporting the swabs in a substantially upright position; and,
wherein said first and second positions of said support member are respective lower and upper positions within the chamber of said housing.

9. A container according to claim 8, wherein said bottom member has attached thereto at least one upright member extending upwardly towards the hinge.

10. A container according to claim 9, wherein the lid is provided with a lever extending therefrom adjacent the hinge, and the upright member is provided with a recess for receiving a free end of the lever therein.

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11. A container according to claim 10, wherein said lever extends at a substantially right angle to said lid.
12. A container according to claim 11, wherein the lever includes a side that faces the container, and wherein the side of the lever that faces the container is provided with a contour that ensures a smooth translation of a movement of the lid to a movement of the bottom member.
13. A container according to claim 8, wherein the movement of said bottom member is substantially translational alternately upwardly and downwardly.
14. A container according to claim 8, wherein the mechanism linking the rotational motion of the lid with movement of the support member is a lever substantially fixedly connected to said lid, and operatively connected in a movable contact relation to said support member such that as the lid is moved, the lever is caused to move therewith in a rotational motion and the lever causes by contact movement a motion of the support member.
15. A container according to claim 14, wherein the lever creates an effect selected from the group of a levering effect and a camming effect either of which providing for moving the support member in a translational direction.
16. A container according to claim 1, wherein the swabs have an absorbent end selected from the group consisting of cotton and cottonish material.
17. A swab dispensing system comprising:
 - at least one swab;
 - containing means for containing said at least one swab; said containing means including covering means for covering the at least one swab within the containing means, the covering means being rotatably connected to the containing means to alternately open and close the containing means;
 - a movable internal support means for supporting the at least one swab;

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whereby the movable internal support means is operatively mechanically linked to the covering means by a rigid camming means on the closing means, the rigid camming means creating a camming effect in its movable contact with said support means to cammingly move the support means such that rotational movement of the covering means causes translational movement of the movable support means.

18. A method for dispensing swabs comprising:

providing a container having at least one swab disposed therein, the container having an opening and lid rotatably connected to the container to alternately open and close the container opening; the container also having a movable internal support member disposed therein for supporting the at least one swab;

moving the lid from a closed position to an open position, whereby the movable internal support member also moves in response to movement of the lid, the support means being operatively mechanically linked to the lid by a rigid camming member on the lid, the rigid camming member creating a camming effect in its movable contact with said support member to cammingly move the support member such that rotational movement of the lid causes movement of the movable support means, the movement of the lid causing a protrusion of the at least one swab from the opening of the container;

removing at least one swab from the container.

19. A method according to claim 18 wherein the mechanical linkage of the support member to the lid is such that rotational movement of the lid causes translational movement of the movable support means.

20. A method according to claim 18, wherein the mechanical linkage of the support member to the lid is such that rotational movement of the lid causes translational movement of the movable support means, the mechanical linkage being selected from the group consisting of a lever and a cam, and the method further comprising levering or camming the support member to cause translational movement thereof.

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EVIDENCE APPENDIX

No Evidence attached.

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RELATED PROCEEDINGS APPENDIX

No Related Proceedings information attached.